

DOCKET NO.: MBI-1067**LITIGATED REISSUE****REMARKS**

This amendment is submitted in response to the Office Action dated January 21, 2003. After entry of this amendment, claims 5-15 will remain pending. Reconsideration and allowance is respectfully requested in view of the remarks made below.

1. The Objection to the Drawings

The drawings were objected to under Rule 84(p)(4) because, as it was correctly noted, reference numeral 44 had been used to designate two separate features. In response to the objection, Applicant has amended the specification and has submitted the attached proposed amendment to the drawings in which one of the reference numerals has been changed to 51. Approval of the amendments and withdrawal of the objection to the drawings is respectfully requested.

2. The Protest and Applicant's Response

Applicant has reviewed the Protest that has been submitted under Rule 291(a) in this application. Essentially, the Protest relies upon the same Prior Art that was previously submitted to the Examiner in this Application on Applicant's form PTO-1449 in the Information Disclosure Statement. These references were briefly discussed by the undersigned and Examiner Wilson in the personal interview that was held on June 19, 2002 and were made of record and considered by Examiner Wilson prior to her indication that the claims were drawn to allowable subject matter. Accordingly, Applicant continues to believe that the claims that are pending in this Application patentably define over the Prior Art that is presented in the Protest.

The British '098 reference was relied upon in the first Office Action to reject original claims 1-4. Applicant has canceled those claims. Claims 9-11 were indicated

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in the same Office Action as being allowable if the §112 problem was addressed and the claims were rewritten in independent form. Applicant has done this. Claims 5 and 13 were indicated as being allowable in the First Office Action if the §112 rejections were addressed. Applicant has done this as well.

Applicant agrees with the Examiner's allowance of claim 5 and disagrees with the comments in the Protest because the Prior Art, including the British '098 reference and US Patent 2,472,028 to Son ("Son") fails to disclose or suggest an apparatus for supporting baby bottles and related accessories for drying including a tray having a bottom portion that is adapted to be supported by an underlying surface such as a countertop, an upper portion and at least two sidewalls; a plurality of pegs extending outwardly from the upper portion, each of the pegs being sized and arranged so as to be able to support a baby bottle; and at least one axle for mounting the pegs for common arcuate movement between a first storage position, wherein the entire peg is positioned substantially adjacent to the upper portion for storage and packaging of the apparatus, and a second operative position, wherein the peg is positioned so as to extend outwardly from the first portion, the axle being mounted for rotation within a pair of opposed journal holes that are defined in the sidewalls, the journal holes being elevated with respect to the upper portion of the tray so as not to receive water from the upper portion of the tray during normal use of the apparatus.

It should be kept in mind that neither the British '098 reference nor Son discloses use of the structure disclosed therein for drying baby bottles or baby bottle accessories. The British '098 reference discloses a drying rack, circa early 20th century, for plates, saucers or dishes. Son discloses a sterilizing tray for hypodermic needles, not an apparatus for supporting baby bottles and related accessories for drying as claim 5 sets forth. Clearly, Son constitutes nonanalogous art to Applicant's claimed invention. The Swiss '919 patent discloses a device for storing a baby bottle set, but it is quite different from the structure set forth in Applicant's claims. The Safety 1st

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publication discloses a bottle and nipple drying rack that includes a number of fixed, upright pegs that are inserted in a plastic tray. The Mommy's Helper reference is similar to the Safety 1st publication, and both of these articles are described in the Background of the Invention portion of this Application.

The Protestor's argument is that it somehow would have been obvious to a person having ordinary skill in the art to combine the various teachings of this diverse group of references in order to achieve what is set forth in claim 5. This argument is deficient in many respects, most notably in the fact that there is none of the requisite suggestion or incentive that is legally necessary to support a combination of references in a §103 rejection. Clearly, Son's hypodermic needle sterilizing device is nonanalogous and should be ignored. In addition, even if the references were combined as proposed, they still would not achieve the claimed structure. In the British '098 reference, the "pegs" do not extend outwardly from the upper portion of the article. Instead, the pegs in each reference are mounted above the sidewalls of the article, to one side or another of the upper face. Also, the pegs in the British '098 reference are not permanently mounted to the tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage. The end of the pegs in the British '098 reference are well above the outer sidewalls of the article, away from the upper face. The pegs in the British '098 reference are not sized to support a baby bottle, as claim 5 requires.

For these reasons, Applicant respectfully submits that the Examiner's decision to allow claim 5 over the references relied upon by the Protestor was correct and should be maintained.

Applicant agrees with the Examiner's allowance of claim 13 and disagrees with the comments in the Protest because the Prior Art, including the British '098 reference and US Patent 2,472,028 to Son ("Son") does not disclose or suggest an apparatus for supporting baby bottles and related accessories for drying including a tray having a

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bottom portion that is adapted to be supported by an underlying surface such as a countertop and an upper portion; a plurality of pegs extending outwardly from the upper portion, each of the pegs being sized and arranged so as to be able to support a baby bottle; and at least two axles, each of the axles connected to at least two of the pegs for mounting the pegs for common arcuate movement between a first storage position, wherein the entire peg is positioned substantially adjacent to the upper portion for storage and packaging of the apparatus, and a second operative position wherein the axles are oriented so that movement of the pegs on a first of the axles when moving from the first storage position to the second operative position is substantially in the same rotation direction as movement of the pegs on a second of the axles when moving from the first storage position to the second operative position.

It should be again kept in mind that neither the British '098 reference nor Son discloses use of the structure disclosed therein for drying baby bottles or baby bottle accessories. The British '098 reference discloses a drying rack, circa early 20th century, for plates, saucers or dishes. Son discloses a sterilizing tray for hypodermic needles, not an apparatus for supporting baby bottles and related accessories for drying as claim 5 sets forth. Clearly, Son constitutes nonanalogous art to Applicant's claimed invention. The Swiss '919 patent discloses a device for storing a baby bottle set, but it is quite different from the structure set forth in Applicant's claims. The Hopkins '417 reference discloses a wall-mounted rack for milk bottles. The Poglein '927 reference discloses a rack for performing high temperature glass annealing. Goldstein discloses a display rack for men's neckties. Clearly, the latter three references are not analogous to Applicant's claimed invention.

The Protestor's argument is that it somehow would have been obvious to a person having ordinary skill in the art to combine the various teachings of this diverse group of references in order to achieve what is set forth in claim 13. This argument is deficient in many respects, most notably in the fact that there is none of the requisite

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suggestion or incentive that is legally necessary to support a combination of references in a §103 rejection. Clearly, Son's hypodermic needle sterilizing device is nonanalogous and should be ignored. In addition, even if the references were combined as proposed, they still would not achieve the claimed structure. In the British '098 reference, the "pegs" do not extend outwardly from the upper portion of the article. Instead, the pegs in each reference are mounted above the sidewalls of the article, to one side or another of the upper face. Also, the pegs in the British '098 reference are not permanently mounted to the tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage. The end of the pegs in the British '098 reference are well above the outer sidewalls of the article, away from the upper face. The pegs in the British '098 reference are not sized to support a baby bottle, as claim 5 requires.

For these reasons, Applicant respectfully submits that the Examiner's decision to allow claim 13 over the references relied upon by the Protestor was correct and should be maintained.

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3. Conclusion

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

John L. Knoble
Registration No. 32,387

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KNOBLE & YOSHIDA, LLC
Eight Penn Center- Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 599-0600